STRAITS SETTLEMENTS.

(Original Civil Jurisdiction)
Terrell, J.
February 7, 1933.
RE SASSOON EZEKIEL
(Singapore Bankruptcy No. 678 of 1931)

Bankruptcy—Bankruptcy Rules Appendix—Part II (Scale of Solicitor's costs.)

The Court is not authorised by the Bankruptcy Ordinance and the Rules thereunder to allow any costs other than those authorised by the Scale in Part II of the Appendix to the Bankruptcy Rules in cases which fall within that scale, even though such scale is inadequate remuneration. *Re Ismail A. Rahim,* Singapore Bankruptcy No. 150 of 1930 distinguished.

MOTION before Terrell J. The facts are sufficiently set out in the Judgment.

Rhodes for Official Assignee.

Seth for Rachel Sassoon Ezekiel, 1st Respondent.

Terrell, J.—This was a motion by the Official Assignee for an order that a conveyance dated the 12th November 1930 by the bankrupt in favour of his wife Rachel Sassoon Ezekiel and a second mortgage made by Rachel Sassoon Ezekiel in favour of her daughter Ethel Giles be declared void.

The respondents to the motion therefore were Rachel Sassoon Ezekiel and Ethel Giles. The former was represented by counsel. The latter was represented by counsel up to the hearing when her solicitors, Messrs. Donaldson & Burkinshaw obtained leave to withdraw. At the hearing before me on the 19th and 24th January 1933 the second respondent appeared in person. Previous to the hearing the evidence of the first respondent was taken *de bene esse* and I am informed that her examination took the best part of a day.

After hearing the evidence I refused the motion with costs and the question of the scale of costs applicable was argued further before me in Chambers.

I think that the question is free from doubt and that the scale provided in Part II of the Bankruptcy Rules applies.

Section 91 of the Ordinance provides that subject to the provisions of the Ordinance and to general rules the costs of and incidental to any proceeding in Court under this Ordinance shall be in the discretion of the Court. The provisions of the Rules and Regulations are confused and unsatisfactory. The Rules were made in 1896 and are so out of date that in Rule 76 (1) the value of the dollar in cases where the allowances for costs are to be on the scale allowed to solicitors in England is taken at three shillings and four pence. Rule 76, however, only applies "subject to the provisions of this Ordinance and these Rules" and I know of no case in which this scale has been made use of.

Costs are in fact controlled by the Regulations which appear as par. VII of Part II of the Bankruptcy Rules such Part being entitled "Scale of Solicitors costs." *(a). Regulation 1 provides as follows:—

"All costs save as in the scale provided which shall be properly incurred under the provisions of the Ordinance or Rules, shall be allowed on the scale contained in the second column in the Schedule to the Rules and Orders on costs under The Courts Ordinance 1878 make on the 22nd June, 1887."

This Regulation, therefore provides the Supreme Court scale in cases which are not provided for in the bankruptcy scale and it would appear therefore that either the bankruptcy scale or the Supreme Court scale must cover every possible case which accounts for the fact that no taxation on the English scale has ever been attempted and in fact the Regulations make Rule 76 superfluous.

It is I think clear that if the scale makes the necessary provision it is not permissible to go outside it. The scale itself provides fees for practically everything and under Par. VI Miscellaneous and General Costs appears a sub-paragraph 4 intitled "Instructions". As a further indication of the careless manner in which the Rules and Scale have been framed it is to be observed that a hearing fee is treated as 'instructions' and the fee for the hearing, trial or determination of any.....motion before the Court is the extraordinary sum of $5.25. That is *prima facie* the fee for the motion which in this case occupied one and a half days in open Court and another day in taking an examination of a witness before the Registrar.

My attention was called to Regulation 4 which provides for an extra allowance for length of sittings or other increased allowances "not inconsistent with this scale." This provision effectually prevents the Court from allowing a fee adequate to the work done. I am prepared to allow $30 a day as being not inconsistent with the scale as I think anything more would definitely be outside it, and I think that the allowance of a fixed sum under Rule 70 (1) would have to take the scale into consideration, and that the Court is not authorised by this Rule to allow a fee which, apart from the Scale, might be considered adequate to the circumstances.

I understand that bankruptcy motions are usually taxed on the Bankruptcy Scale, and in cases where

* (a) This would appear to be a mistake and should read Part II of the Appendix to the Bankruptcy Rules.

the Supreme Court Scale has been adopted it is probable that the order was made by consent and the matter not properly argued.

In the case of *re Ismail A. Rahim*, Bankruptcy No. 150 of 1930, an issue was directed and tried before Thorne J. and costs were allowed on the Supreme Court Scale, but in that case there had been a previous order "that the matter be proceeded with as an ordinary civil action." This case is no authority, therefore, for the hearing of a bankruptcy motion where no such order has been made.

Admittedly the bankruptcy scale is out of date and inadequate and could no doubt be altered with advantage, but so long as the present Rules remain in force it is with rare exceptions the only scale applicable.

The Official Assignee will, therefore, have to pay the first respondent's costs to be taxed on the bankruptcy scale, and the second respondent must also have her costs on the same scale up to the hearing before me when she was not represented by Counsel.

Solicitors for the Official Assignee—
Messrs. Drew & Napier.

Solicitors for the 1st Respondent—
Messrs. Sisson & Delay.

(Appellate Criminal Jurisdiction)
Murison, C.J., Terrell & Whitley, JJ.
February 11, 1933.

REX v. LI KIM POAT & ANOTHER.

(Singapore Magistrate's Appeal No. 76 of 1932)

Ordinance 133 *(Betting)—Singapore Turf Club—Members betting on Club premises—Common Betting House—Definition of place.*

Held, (by Murison, C. J., Terrell J., Whitley J. dissenting). The Members' Enclosure of the Singapore Turf Club is not a place nor a common betting house within the meaning of Ordinance No. 133 (Betting).

APPEAL from convictions and sentences recorded by a District Court at Singapore, to the Supreme Court, held before a Full Court consisting of Murison C.J., Whitley J., and Terrell J.

The Appellants were convicted by the District Judge on two charges; first, of using a place in front of the totalisator in the Members' Enclosure of the Singapore Turf Club as a common betting house; secondly, of using the place in front of the totalisator in the Members' enclosure at the Singapore Turf Club as a common betting house which place was habitually used for betting; both being offences punishable under S. 3(a) of Ordinance 133 (Betting).

Knowles (*Mendis* with him) for Appellants.

P. A. McElwaine, K.C. (D.P.P.) for Respondent.

Murison, C.J.—In this appeal the appellants were both convicted of offences against Ordinance No. 133 (Betting).

There were three charges originally, but the convictions were had only upon the first two. These charges were as follows:

That they on or about the 26th day of November, 1932, at Singapore, being the occupier of a certain place, to wit, a place in front of the totalisator in the Members' Enclosure at the Singapore Turf Club did use the place as aforesaid as a common betting house and that they have thereby committed an offence punishable under section 3 (a) of Ordinance 133 (Betting).

Alternatively—

That they on or about the 26th of November, 1932, at Singapore, being the occupier of a certain place, to wit, a place in front of the totalisator in the Members' Enclosure at the Singapore Turf Club did use the place as aforesaid as a common betting house which place was habitually used for betting and that they have thereby committed an offence punishable under section 3 (a) of Ordinance 133 (Betting).

The facts appear to be as follows.

On the 25th and 26th November, 1932 the appellants, who are both members of the Singapore Turf Club, were in the Members' Enclosure of the Club. On the first day there were 8 and on the second day 9 races. No. 1 sat above on the back bench. No. 2 was below. During the race in each case, that is after the bell started, No. 2 handed up slips to No. 1. It is proved that when No. 1 received the slips he put them in an upper pocket and after the race took them out, marked them with a pencil (red for his loss, and blue for his gain) and then put them in a lower pocket. No. 1, when arrested and searched, was found to have seven bundles of these slips in his pocket. He also had the red and blue pencil, and a programme.

No money was seen to pass on these transactions.

There were also found on the appellants a large number of Tote tickets; but no witness saw either appellant putting money on the Tote.

The exact process is not very easy to understand. If the slips, as apparently was the case, were received after the horses had started, the appellant could not afterwards bet on the Tote either on their own or their clients account, for the Tote was closed. That the appellants did bet on the Tote is clear, for Tote tickets were found on them.

The Magistrate finds as a fact that the appellants were carrying on business as bookmakers giving their clients the same odds as the Tote paid. Mr. Knowles for the appellants, had contended that the prosecution must prove affirmatively that money did not go on the Tote and that there was no evidence that the betting